stipulated amount in s. 37(da)(vi) of the Dangerous Drugs Act 1952 (Act 234), I am satisfied that he did traffic in 925.77 grammes of cannabis on the date, time and place mentioned in the charge.

The prosecution had proved its case beyond reasonable doubt and accordingly, I found the Accused guilty of the offence for which he was charged and convicted him. I sentenced him to death.

Order accordingly.

RUHANI BINTI MOHIAT & ANOR.

v.

ABDUL KARIM BIN MAT ALI & ANOR.

HIGH COURT, KUANTAN
DATO' HJ. LAMIN BIN HJ. MOHD YUNUS J.
[CIVIL SUIT NO. 119 OF 1985]
10 MAY 1993

TORT: Negligence - Claim for damages - Liability - Whether defendants liable - Contributory negligence - Fact deceased not wearing safety helmet at time of accident - Whether constituted contributory negligence - Motorcycles (Safety Helmets) Rules 1973 - Quantum - 1st plaintiff widow of deceased - Dependency claim - 2nd plaintiff owner of motorcycle involved in accident.

PRACTICE AND PROCEDURE: Capacity to sue - Plaintiffs suing as administrators - Action commenced before extraction of letters of administration - Whether plaintiffs had capacity to sue - Sections 2, 30, 31, Probate and Administration of Estate Act 1959.

The plaintiffs filed a suit against the defendants on 14 March 1985 as administrators of Ahmad Bin Yusof, deceased. The deceased had been killed in an accident involving his motorcycle and a bus driven by the first defendant. The deceased was knocked from behind and he was pinned down under the bus. The accident occurred on 28 May 1982 on the road from Kuantan at the junction leading to Felda Bukit Goh. The deceased was not wearing a safety helmet at the time of the accident.

The first plaintiff was the widow of the deceased, whilst the second plaintiff was the owner of the motorcycle which has involved in the accident. The plaintiffs had been granted letters of administration on 11 May 1984, which, however, were extracted only on 6 May 1991.

The defendants made a preliminary objection that the plaintiffs had no capacity to sue as administrators as they were not in possession of the letters of administration at the time of the filing of the suit.

Held:

[1] The plaintiffs had capacity to sue as administrators of the deceased, as the letters of administration had already been granted to them before the date of the filing of the suit.

A person is vested with the power to administer the estate of the deceased from the date an order granting him the letters of administration is made on an application by way of petition as required under O. 71 r. 5(1) of the Rules of the High Court 1980. The word 'administrator' under s. 2 of the Probate and Administration Act 1959 (the Act) means 'a person to whom administration is granted'. Furthermore, the granting of letters of administration is not done simply as a matter of course. The Court is vested with discretionary powers under s. 30 of the Act. Rights and liabilities accrue upon the grant being made, as provided by s. 31. The extraction of the letters of administration only serves as evidence to the world at large that the person named in the grant is the administrator of the deceased, the grant taking effect from the date the petition for letters of administration is allowed and the order granted.

[2] The first defendant was wholly at fault and was 100% blameworthy.

(a) The first defendant was negligent while driving his bus.
(b) The fact the deceased did not have his safety helmet on at the time of the accident did not contribute to the injuries that caused his death. With or without a safety helmet, the deceased's skull would still have been crushed by the weight of the bus under which he was pinned, and he would still have died.

Though it is mandatory to wear helmets as required by s. 4 of the Motorcycles (Safety Helmets) Rules 1973 [PU (A) 43/1973, the rules are for the purpose of personal protection and not with the view to be used as a test to ascertain contributory negligence in a claim for damages.

[3] In the circumstances, it was fair to take the sum of RM400 as being the nett loss for dependency.

The first plaintiff had been deprived of her husband's efforts as the breadwinner of the family, and the money she had been deprived of must be calculated on the basis of what she would still have enjoyed as if the husband were alive, on the basis of the husband's earnings and not her own earnings after her husband's death. The fact that the first plaintiff earned after her husband's death as much as he had earned when alive was irrelevant. It was improper to view her circumstances subsequent to the death of her husband as if she were a single person.

[4] The second plaintiff's claim for RM750 as the loss of his motorcycle should be allowed.

Special damages have to be strictly proved. In this case a motorcycle was the subject matter to be valued. The agent for Honda in Kuantan giving evidence for the plaintiffs should be treated as an expert in his own field and his evidence accepted as reliable.

[Plaintiffs claims allowed with costs].

Cases referred to:
Ingall v. Moran [1944] 1 AER 97 ***(refd)***
Comptroller of Income Tax v. Yan Tai Min [1965] MLJ 255 ***(refd)***
Ang Hoi Yin v. Sim Sie Hau [1969] 2 MLJ 3 ***(refd)***
Mohamed Hanif & Anor. v. Chin Ah Bah [1974] 1 MLJ 128 ***(refd)***
Chia Foon Sian & Anor. v. Lam Chew Fah & Anor. [1955] MLJ 203 ***(refd)***
O' Connell v. Jackson [1971] 3 AER 129 ***(refd)***
Hilder v. Associated Portland Cement Manufacturers Ltd. [1961] 3 AER 709 ***(refd)***

Legislation referred to:
Motorcycles (Safety Helmets) Rules 1973, r. 4
Probate and Administration Act 1959 (Act 97) ss. 2, 119
Rules of the High Court 1980, O. 71 r. 5(1)

Other sources referred to:
The Earl Jowitt Dictionary of English Law

For the plaintiffs - Joseph Au; M/s. Omar & Joseph Au
For the defendants - S.S. Muker; M/s. Lovelace & Hastings

JUDGMENT

Hj Lamin Bin Hj. Mohd Yunus J:
Learned Counsel for the defendants is making a preliminary objection pertaining to the plaintiffs' capacity to sue as administrators of the estate of the deceased on the ground that at the time of filing this suit, the plaintiffs were not in possession of the letters of administration. In this case the plaintiffs describe themselves as Administrators of the estate of Ahmad Bin Yusof, the deceased and it is a fact that the grant of the letters of administration was extracted on 6 May 1991, some five to six years after the filing of this suit. As stated in the notes of the proceedings both parties were not going to contest its contents and it was therefore, tendered as part of the agreed bundle. However, Counsel for the defendants in his written submission persisted with his contention that on the authorities, the plaintiffs lacked the capacity to sue as administrators of the estate of the deceased. He cited the

English case of *Ingal v. Moran* [1944] 1 AER 97 and three local cases namely *Comptroller of Income Tax v. Yan Tai Min* [1965] MLJ 255, *Ang Hoi Yin v. Sim Sie Hau* [1969] 2 MLJ 3 and *Mohamed Hanif & Anor v. Chin Ah Bah* [1974] MLJ 128 which followed Inggal. The proposition enunciated by Inggal is that until the grant of letters of administration has been **extracted,** the administrators are not clothed with the capacity to sue. With the greatest of respect, rightly or wrongly I seem to be persuaded to look the other way by the case of *Chia Foon Sian & Anor. v. Lam Chew Fah & Anor.* [1955] MLJ 203. The present suit was filed on 14 March 1985 and on that date, the plaintiffs therefore, lacked the capacity to sue as administrators because the letters of administration was only extracted on 6 May 1991. The question that I have to ask myself is, whether the act of **extraction** of the letters of administrations invests the administrators with the power to sue? The word "extract" as appearing in the Chambers 20th Century Dictionary among other things means "to derive", "to take a copy of (Scots law)", "to copy passages from". **The Earl Jowitt Dictionary of English Law** gives its meaning as:

> A written instrument, signed by the proper officer, containing a statement of a decree, and if necessary, a warrant to charge the debtor and to execute all competent diligence against person or property; to extract is to procure this document.

So the word "to extract" means no more than to take or to procure a document or a copy of a document.

The act of extraction does appear to me quite clearly that it does not convey the meaning of "investing" with any power. In the daily administration of the civil courts in this country, when one approaches the Court with the view to extract a document, say an order, what one gets is the exact copy of the order with the proper seal of the Court for a fee. Also nowhere is there provided either in the Probate and Administration Act 1959 (Act 97) or in the Rules of the High Court 1980 that upon "extraction" of the grant of the letters of administration that the administrators are clothed or invested with the power to sue and that power only subsists from the date of extraction. When a person wishes to obtain a grant of letters of administration, he applies by way of a petition as is required under O. 71 r. 5(1) of the Rules of the High Court 1980 by filing Form 168. At the end of Form 168, there is a prayer thus:

> The petitioner prays that Letters of Administration of the Estate and Effects of the said ... may be granted to him ...

After all the necessary requirements have been fulfilled, the Court will then issue a notice of hearing of the petition wherein are stated the time, day and date when the petition will be heard. It also invites all those having any interest in the application to be present and those wishing to object to lodge a caveat. In the case of the plaintiffs in the present suit, they did file the petition as required by the rules of Court on 27 August 1982 and notice of hearing of the petition was issued stating that it would be heard at 9.30 a.m. on Friday, 11 May 1984. On 11 May 1984 as appointed all parties appeared before the Court and the order as prayed for was granted the same day. The word "administrator" under s. 2 of the Probate and Administration Act 1959 (Act 97) means "a person to whom administration **is granted**" (underline is mine). In the present case, the petition was heard on 11 May 1984 in the presence of parties and the order as prayed for was granted that same day. So the petitioners in this case were invested with the power to administer the estate of the deceased as from 11 May 1984 and no other interpretation, as far as I can see, is admissible. The word "administration" under s. 2 of the Act merely gives the definition of what is "administration" while the words "issued by the Court" employed therein are to my mind incapable of according it with anything beyond that of evidential value. In all the other provisions of the Act that spell out the "investing" or "devesting" an administrator with a power, the draftsman has carefully chosen the word "grant". It may also be borne in mind that the granting of letters of administration by the Court, as a matter of law, is not done simply as a matter of course. The Court is vested with discretionary powers in respect of which s. 30 bears testimony. It reads:

> In granting administration the Court shall have regard to the rights of all persons interested in the estate of the deceased person or in the proceeds of sale thereof, and, in particular, administration with the will annexed **may be** granted to a devisee or legatee; etc.

Section 31 talks about the result of the grant of administration and it suggests that the rights

and liabilities accrue upon the grant being made. Section 31 reads:

> Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

With respect, I am therefore, of the view extraction of the letters of administration only serves as evidence to the world at large that the person or persons named in the grant is the administrator or are the administrators of the estate of the deceased and the grant takes effect from the date the petition is allowed and the order granted. So the date of extracting the letters of administration is of no consequence whatever so that the extraction may be done at any time after the order is made but the date of the order remains. In our case, therefore the plaintiffs must be taken to have the power to sue as administrators as from 11 May 1984. I must say that it is naive to suggest that they lose or are divested of their power of representation at the time of filing a suit just because they are not able to show the extraction of the grant at that particular time. They have only to go to the Court to get it and they will be given as a matter of course. Surely human conscience will not deprive them of their right to administer in accordance with law the property of their beloved ones who have gone away on the flimsy excuse that they do not have the evidence at the time of filing. They should be allowed to file their claim and then to obtain the evidence afterwards. In the case before me, they did file their suit as administrators and later, they did obtain the evidence, that is, extraction of the letters of administration. Nothing must jeopardise their interests as administrators because the letters of administration had already been granted to them before the date of filing the suit. I therefore, find that the plaintiffs were properly clothed with the power of representation as administrators of the estate of the deceased at the time of filing this action.

Now, this is a claim for damages as a result of a motor accident. For the purpose of ascertaining liability, we have only the police report lodged by the defendant (SD1), Abdul Karim B. Mat Ali , and his evidence adduced at the trial before me. At the trial in his examination-in-chief he said that on the morning of 28 May 1982, he was driving a bus CG 766 belonging to the Seng Heng Bus Sdn. Bhd. He was then coming from Kuantan town and heading towards Felda Bukit Goh. Before he reached the junction leading to Felda Bukit Goh, he was following a motorcycle and on arrival at the junction, SD1 said that the motorcyclist suddenly stopped and he tried to apply his brake and to take evasive action and at that time the accident occurred. On that day it was raining. Before the accident there was no motor vehicle there except the said motorcycle. The accident occurred before he turned into the road leading to Felda Bukit Goh. He said that before the accident, there was no motor vehicle coming from Bukit Goh. He also said that before the motorcyclist stopped, he (the motorcyclist) did not give any signal.

In cross-examination SD1 said that the road before reaching the junction was straight and that he had been following the motorcycle for about 2 miles before coming to the junction. When he was asked whether he had stated in his police report to the effect that the motorcycle stopped suddenly, his answer was that he could not remember. He said that when he saw the motorcycle stopping suddenly, he then put on his brake but his bus still moved forward and knocked into the motorcycle. He blamed the road surface as it was a bit slippery because it was drizzling that morning. He admitted that he was following the motorcycle at the distance of about 50 feet.

I wish to observe firstly that in the statement of Agreed Facts (AF), it is stated that "The weather was dry." So what SD1 said about the condition of the surface of the road being slippery could not have been true. Also no mention was made about the weather in his police report. In his police report, there is no allegation that the motorcycle made a sudden stop. In fact he gave a reason as to why the deceased stopped his motorcycle at the junction and that was because "ada sebuah motor/kereta dari Felda Bukit Goh hendak ke Kuantan." SD1 even denied in his evidence before me the presence of any other vehicle at the junction except for the motorcycle. If he had been keeping a proper look-out which I believe he did not, SD1 would have anticipated the deceased's action by slowing down when approaching the junction and finally stop behind the motorcycle. He however, said in evidence before me that he did not realise that the motorcycle in front of him was going to stop for

he said, "Saya tidak sangka motorsikal di hadapan hendak berhenti." He gave this excuse in order to support his allegation that the deceased made a sudden stop. But I am inclined to believe it was because he was not paying attention to what was going on in front of him. By stopping at the junction, the deceased was being very careful because there was another vehicle at the junction which had come from the direction of Felda Bukit Goh. To my mind, SD1 was wholly at fault and he was therefore, 100% blameworthy.

In his written submission, learned Counsel for the defendants urged me to attribute 15% liability on the part of the deceased on the basis of his allegation that the deceased at the time of the accident, did not have his crash helmet on. He relied on the authority of *O' Connell v. Jackson* [1971] 3 AER 129 where the test of contributory negligence was applied. The judgment of the Court as delivered by Edmund Davies LJ reads:

> The first question, accordingly, is whether this plaintiff was guilty of contributory negligence. In *Jones v. Livox Quarries Ltd*., Denning LJ said:
>
> Just as actionable negligence requires foreseeability of harm to others, so contributory negligence requires foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might hurt himself; and in his reckonings he must take into account the possibility of others being careless.
>
> Respectfully adopting this test, it seems clear that the plaintiff, travelling through what we were informed is a busy traffic area, ought reasonably to have foreseen the possibility of his being involved in an accident even though he himself drove with the greatest care.

In *Hilder v. Associated Portland Cement Manufacturers Ltd*. [1961] 3 AER 709, Ashworth J. declined to hold that the failure to wear a crash helmet constituted contributory negligence on his part. He was pursuaded to adopt this approach particularly not for the reason that there was no statutory regulations making it compulsory the wearing of crash helmet, but because of the circumstances of the case for he said:

> ... I am by no means certain, that, if he (the plaintiff) had been wearing a helmet, his skull would not have been fractured. Accordingly, if this claim succeeds, it succeeds in full.

Even in the case of *O' Connell v. Jackson*, the Court did not find it easy to arrive at the figure of 15% contributory. In that case, the defendant motorist was emerging from a minor road into a major road on which the plaintiff was travelling. The motorist stopped at the junction but then he negligently moved forward so that the plaintiff coming from the defendant's right on his "moped" on the major road knocked the defendant's car's offside bumper and went off at a tangent. He was flung and his head came into collision with the roadway. The injury that was significant to decide the issue of contributory negligence was severe and extensive fracturing of the plaintiff's skull. At the trial both sides produced medical witnesses who gave their views regarding the likelihood of such an injury being prevented had the plaintiff been wearing a crash helmet at the time of accident. The trial Judge acquitted the plaintiff of contributory negligence hence the appeal and the appellate Court gave judgment in favour of the defendant reducing his liability by 15%. My immediate response to the medical evidence in the *O'Connell's* case is that, firstly, it was a case where the plaintiff did not wear a crash helmet, so that the material evidence, that is, a crash helmet that could give the plaintiff "considerable protection" was not before the Court. If at all any crash helmet was to be made the subject matter of argument or for the expression of views, it must be, with respect, one of the officially recommended types or designs and make that the plaintiff was supposed to wear. But nothing of the kind was before the Court. The question I wish to pose here, will it be proper for any Court in a similar situation to rely on the views of medical witnesses. Conversely, would doctors be competent in a similar situation to express their views. The result of an impact I imagine will depend on the degree and direction of force and of course the quality of the helmet, It may also depend on whether just before the accident, the helmet had been properly secured to the head by having it strapped to the chin or in any other way. If, for example before the accident the wearer (the plaintiff) merely put the helmet on without having it properly secured, in the course of being flung, the helmet may, however move a little or more away from the original position and on impact may not

give that "considerable protection" and those considerations appear to be more technical than medical in nature. At this point it may also be pertinent to ask, how anyone is to know whether before the accident the plaintiff had or had not secured or properly secured his helmet on his head. If he did not, must also the plaintiff be guilty of contributory negligence and if so, how many per cent. In my view, if it is accepted that a plaintiff must be guilty of contributory negligence for not wearing a crash helmet, he must also be guilty of contributory negligence for not having it secured even though he had his helmet on. Since it is difficult if not impossible to ascertain in any given situation, whether the plaintiff had secured his helmet properly on his head before the accident, therefore, in view of those technical considerations, it would be impossible, in all honesty to quantify with "considerable" accuracy that "considerable protection" so that without it, there would not be that corresponding degree of contributory negligence that must be attributed to the plaintiff.

Now let us look at our statute on road traffic and the rules made thereunder. Their application or otherwise in a civil claim was never canvassed by any of the Counsels before me. The urge to identify their role in the system failed to pursuade me to abandon my examination of them. Rule 4 of our Motorcycles (Safety Helmets) Rules 1973 [P.U. (A) 43/1973, as amended] reads:

> Every person, other than a person exempted under rule 5, who drives or rides on a motorcycle on a road shall wear a safety helmet on his head fitted and securely fastened in the manner required by the nature and construction of the safety helmet.

Under the abovesaid rule, it appears that the wearing of crash helmet is mandatory because of the phrase, "shall wear". But it must be remembered that nowhere in any of our statutes is there required to take into account the wearing or failure to wear a safety helmet for the purpose of quantifying the degree of negligence or contributory negligence or as the case may be in any civil suit. May it be noted that rule 4 expressly qualifies the wearing of a helmet, in that it must be "fitted and securely fastened in the manner required by the nature and construction of the safety helmet." With that, rule 4 confronts squarely the problems as I have earlier indicated. It is made further complicated by the requirement that it must be secured "in the manner required by the nature and construction of the safety helmet." This apparently suggests that there are types of safety helmets with varying "nature and construction". Therefore, there must be evidence before the Court that the plaintiff (or if he is dead, the deceased rider or pillion) must have worn before the accident a particular type of safety helmet. If he had none on his head at the time of the accident, what will be the evidence that the Court is entitled to consider. Must the Court embark on an "expedition" and then at the end of it faced without any sensible alternative, hand out a judgment plainly based on conjecture. The judge may just as well simply toss a coin.

As I have pointed out that it is mandatory under rule 4 to wear a safety helmet but at the same time, it makes an exception by way of on exemption for hajis, hajiahs, lebais and sikhs [see Exemption Notification: PU (B) 23/1975]. They are completely exempted provided they wear their "serbans" or "turbans" respectively. By complete exemption, what does it imply in the way of ascertaining negligence or contributory negligence. If they have their serbans or turbans at the time of the accident, are they to be treated in the same way as a person wearing a safety helmet under rule 4. If so, then there is a silent presumption that both the serbans and turbans are equally capable of providing "considerable protection" like a safety helmet though they are certainly different in nature and construction from the safety helmet apart from the various shapes and sizes in the serbans and turbans we see on the road. In view of the attendant difficulties and uncertainties as I have discussed above for the purpose of ascertaining the degree of contributory negligence under our rule, and in the absence of express provisions in any of our statutes to the effect that the failure to wear or incorrectly wearing a safety helmet shall be a factor to be considered in ascertaining contributory negligence. I therefore, hold that our Motorcycles (Safety Helmets) Rules 1973 are made only in the nature of a "friendly advice" for the purpose of personal protection and not with the view to be used as a test to ascertain contributory negligence in a claim for damages. The failure to comply with rule 4, may very well be visited with a punishment under section 119 of the Act. But that is a different matter.

Now, as regards the facts of the present case, I have already come to the conclusion that SD1

was negligent when driving his bus. He knocked the deceased from behind and both the deceased and his motorcycle were pinned down under the bus as can be seen from the photographs. There was no way for the deceased to escape death as the whole weight of the bus was on him. One of the most significant injuries that had caused his death was the multiple crushed and comminuted fracture of the skull and exuding brain matter. I have said all I need to say on the law regarding the wearing of a safety helmet. However, merely by viewing the scene, we only need to ask a simple question, could that safety helmet withstand the weight of the bus so as to give the deceased a "considerable" protection to his head, if he had properly worn one. I have no doubt in my own mind that with or without a safety helmet, the deceased's skull would still be crushed and he would still die as a result. The defendant's claim for a reduction in liability must fail.

The appellate court in the *O'Connell's* case applied the test of contributory negligence on the principle of "foreseeability of harm to oneself" so that it found as stated in its judgment that:

> ... the plaintiff, travelling through what we were informed is a busy traffic area, ought reasonably to have foreseen the possibility of his being involved in an accident even though he himself drove with the greatest care.

It would appear that the Court was persuaded to apply the said test more by reason of the facts of the case for it says:

> ... whereas **in the present case** the probable effectiveness of crash helmets in reducing the risk of a serious head injury was solidly established;

It is not clear from the above statement whether in every case parties must produce medical witnesses to testify as to the effectiveness of crash helmets. But with the application of the test for contributory negligence, a motorist will have no defence for failure to wear a crash helmet even though he is blameless for the accident. The only point left in the circumstances to be sorted out is the quantum which the Court admits is not an easy question to deal with except by adopting "a broad approach". The picture is not made any clearer when contributory negligence must be related only to that "field of additional injuries and damage" as the Court says, "which would not have occurred if a crash helmet had been worn." How does one identify those "additional injuries and damage" and that the Court admits:

> It is not possible on the evidence to measure the extent of that field and then apportion that measure between the blameworthiness and causative potency of the acts and omissions of the parties.

Yes, it assessed it at 15%. As I see it, if both parties, that is, the guilty and the innocent are in Court to testify, we may see some light as in the *O'Connell's* case. If the innocent motorist without the crash helmet died instantly at the scene as in our case, what then will be the test to be applied as to "responsibility" and what approach to adopt for the purpose of indentifying those "additional injuries". He was knocked from behind like a man being shot from the back. Must he still answer for his innocence. It does not make sense if he must. What if he unwittingly forgot to wear his helmet because he was rushing out to see his critically injured son in the hospital because of a motor accident an hour earlier, but this evidence would never be known as he had already died. Human conscience dictates that when a person is completely innocent, he must remain innocent. Our law on the wearing of crash helmet, if I may repeat is not intended to influence the degree of responsibility or the quantum of damages of any party involved in a motor accident.

Now, I shall concern myself with the dependency claim for the first plaintiff (SP1) as the widow of the deceased. According to her, when her husband was alive, he gave all his monthly earnings to her which were between RM300 to RM400 per month and sometimes up to RM500 out of which he took RM50 per month from her for his personal expenses. But at the end of her cross-examination, she said:

> Ya, selepas suami saya meninggal pendapatan saya tidak pernah kurang daripada apa suami saya beri dahulu.

That was the position of her income from the palm oil estate after her husband died. The learned Counsel for the defendants therefore, contended that she had lost nothing as a consequence of her husband's death and accordingly, she was not entitled to any claim as a dependant to her husband. In a claim of this nature in my considered opinion, it is improper to view her

circumstances subsequent to the death of her husband as if she was a single person and to be influenced by them. As she was a married person at the time of the accident, we have to view her plight when deprived of her husband's efforts as the breadwinner of the family so that the dollars and cents that she had been deprived of must be calculated on the basis of what she would still have enjoyed as if the husband had been alive - meaning on the basis of her husband's earnings and not on her own earnings after her husband's death. In the circumstance, I think it is fair to take the sum of RM400 as being the nett loss for dependency. I agree that the resulting dependency claim shall be as follows:

(a) Pre-trial loss for 114 months @ RM400 on a direct multiplier	- RM45,600.00
(b) Post-trial loss for 30 months @ RM400 on the annuity tables	- RM10,998.38
Total :	RM56,598.38

The second plaintiff is only claiming for the loss of the motorcycle as he was the owner of it. I agree that special damages have to be strictly proved. But in this case, a motorcycle was the subject matter to be valued. We have the evidence of PW5, an agent for Honda in Kuantan. He said that a second-hand Honda Cub C70 1978 model, if in good condition would be worth RM1,200. He also said that in 1982 a new Honda C70 on the road would cost RM1,749.66. The depreciation for the first year would be about RM100. After 4 years, it would be about RM500. He was also dealing in second-hand Honda C70. He said the price of 1978 model in 1980 would be between RM800. and RM1,000 depending on its condition. Counsel for the defendants contended that those prices as quoted by PW5 were "pure estimates" of market value and should not be accepted. In my view, being a man in the market and having been an agent for Honda motorcycles for about 28 years and in the absence of evidence to the contrary, PW5 ought to be treated as an expert in his own field, and I therefore, accept his evidence as being reliable. In this case, the claim is made only for RM750. There is no reason why it should not be allowed.

My calculations in regard to the whole case are as follows:

1. ***Liability at 100%***
2. ***Special Damages***

(a) the sum agreed	- RM 1,808.00
(b) Motorcycle	- RM 750.00
	RM 2,558.00

(c) Interest @ 4% per annum from date of accident to date of judgment and thereafter @ 8% per annum to date of realization.

3. ***General Damages***

(a) Pre-trial loss for 114 months @ RM400 on a direct multiplier	- RM45,600.00
(b) Post-trial for 30 months @ RM400 on annuity tables	- RM10,998.35
	RM56,598.38

(c) Interest on RM45,600 @ 6% per annum from date filing of writ (14 March 1985) to date of judgment and thereafter at 8% per annum to date of realization and the sum of RM10,998.38

4. ***Costs***

Reported by Shamsiah Begum Subhan